

Message Text

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TAGS: EIND, MTN

SUBJECT: U.S. COPYRIGHT LAW, MANUFACTURING CLAUSE, AND
THE "TORONTO AGREEMENT"

REF: GENEVA 7971

SUMMARY: THE NEW U.S. COPYRIGHT BILL WAS SIGNED INTO
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LAW BY THE PRESIDENT ON OCTOBER 19. THE NEW LAW, WHICH
IS EFFECTIVE JANUARY 1, 1978, IS A SIGNIFICANT IMPROVE-
MENT OVER PRESENT LEGISLATION AND SHOULD HAVE POSITIVE
EFFECTS VIS-A-VIS OUR INTERNATIONAL COPYRIGHT RELATIONS.

THERE IS STILL SOME POSSIBILITY OF DIFFICULTY ARISING IN THE GATT AND IN A BILATERAL CONTEXT BECAUSE OF CONTINUANCE UNTIL JULY 1982 OF THE "MANUFACTURING CLAUSE", TO WHICH AN EXCEPTION HAS BEEN MADE FOR CANADA.

1. PUBLIC LAW 94-553, THE "GENERAL REVISION OF THE COPYRIGHT LAW, TITLE 17 OF THE UNITED STATES CODE", HAS BEEN PASSED BY CONGRESS AND SIGNED BY THE PRESIDENT, AND WILL BE EFFECTIVE JANUARY 1, 1978.

2. THE "MANUFACTURING CLAUSE" OF THE EXISTING COPYRIGHT LAW LIMITS TO 1500 COPIES IMPORT INTO OR DISTRIBUTION WITHIN THE UNITED STATES OF ENGLISH-LANGUAGE BOOKS

AUTHORED BY U.S. NATIONALS LIVING IN THE UNITED STATES, OR DOMICILIARIES, AND REQUIRES THAT FOR FULL U.S. COPYRIGHT PROTECTION THAT AN EDITION BE PRODUCED IN, OR MADE FROM TYPE SET IN, OR PLATES MADE IN, THE UNITED STATES.

3. SECTION 601 OF THE NEW LAW LIBERALIZES THE MANUFACTURING CLAUSE. FIRST, A VIOLATION OF THE MANUFACTURING CLAUSE AS REGARDS A BOOK WOULD NOT AFFECT THE RIGHT OF THE COPYRIGHT PROPRIETOR TO AUTHORIZE A MOTION PICTURE VERSION OR OTHER USE OF THE BOOK. IT WOULD ONLY AFFECT ENFORCEMENT OF COPYRIGHTS WITH RESPECT TO PUBLICATION AS A BOOK. SECOND, THE NUMBER OF COPIES OF ANY WORK BY AN AUTHOR, SUBJECT TO SECTION 601, THAT MAY BE IMPORTED HAS BEEN INCREASED FROM 1,500 TO 2,000. THIRD, AND MOST IMPORTANT, THE MANUFACTURING CLAUSE WILL EXPIRE ON JULY 1, 1982. FOURTH, CLAUSE (B)(7) OF SECTION 601 ADDS A SIGNIFICANT NEW EXCEPTION WHICH ALLOWS AN AUTHOR TO ARRANGE FOR FOREIGN PUBLICATION AND NOT BE SUBJECT TO THIS SECTION.

4. SECTION 601(A) OF P.L. 94-553, THE "MANUFACTURING CLAUSE" WILL NOW READ THAT "PRIOR TO JULY 1, 1982, AND EXCEPT AS PROVIDED IN SUBSECTION (B), THE IMPORTATION LIMITED OFFICIAL USE LIMITED OFFICIAL USE

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INTO OR PUBLIC DISTRIBUTION IN THE UNITED STATES OF COPIES OF A WORK CONSISTING PREPONDERANTLY OF NONDRAMATIC LITERARY MATERIAL THAT IS IN THE ENGLISH LANGUAGE AND IS PROTECTED UNDER THIS TITLE IS PROHIBITED UNLESS THE PORTIONS CONSISTING OF SUCH MATERIAL HAVE BEEN MANUFACTURED IN THE UNITED STATES OR CANADA." IN OTHER WORDS, AFTER JANUARY 1, 1978, CANADA WILL NO LONGER BE SUBJECT TO THE RESTRICTIONS OF THE MANUFACTURING CLAUSE. FURTHER, AFTER JULY 1, 1982, THE CLAUSE WILL AUTOMATICALLY EXPIRE. IT IS AN EXPIRATION RATHER THAN A PHASE-OUT.

5. THE CANADIAN EXCEPTION MAY BE TRACED BACK TO THE SO-CALLED "TORONTO AGREEMENT" BETWEEN THE U.S. AND CANADIAN PUBLISHING INDUSTRIES, PRINTING UNIONS AND BOOK MANUFACTURES. IN RETURN FOR U.S. INDUSTRY AGREEMENT TO THE EXCEPTION THE CANADIAN PUBLISHERS PROMISED TO 1) SEEK CANADA'S ACCESSION TO THE FLORENCE AGREEMENT, (AN AGREEMENT WHICH PROVIDES INTER ALIA FOR EXEMPTION FROM CUSTOMS DUTIES CERTAIN EDUCATIONAL, CULTURAL, AND SCIENTIFIC MATERIALS AND INSTRUMENTATION, INCLUDING COPYRIGHTED WORKS); (2) REMOVE OTHER CANADIAN TRADE RESTRICTIONS THAT ADVERSELY AFFECT U.S. PUBLISHERS. CANADA PRESENTLY HAS HIGH TARIFFS ON ABOVE ITEMS.

6. SINCE QUID PRO QUO AGREEMENT DESCRIBED PARA 5 ABOVE

WAS INDUSTRY-TO-INDUSTRY, IT IS, OF COURSE, NOT BINDING ON THE CANADIAN GOVERNMENT. THE U.S. PUBLISHING INDUSTRY AT THE TIME OF THE "TORONTO AGREEMENT" HAD OBTAINED ASSURANCE FROM THE CANADIAN PUBLISHERS (JOINT COMMITTEE OF THE PRINTING AND PUBLISHING INDUSTRIES OF CANADA) THAT CANADA WOULD JOIN THE FLORENCE AGREEMENT, IF THE EXCEPTION WERE GRANTED. HOWEVER, THE GOC HAS NOT YET MOVED TOWARD ADHERENCE EVEN THOUGH THE EXCEPTION FOR CANADA HAS BEEN IN THE PROPOSED LEGISLATION FOR SOME TIME.

7. THERE WAS STRONG EXECUTIVE AGENCIES' OPPOSITION TO CONTINUANCE OF THE MANUFACTURING CLAUSE, AS A NON-TARIFF BARRIER INCONSISTENT WITH OUR BILATERAL TRADE POLICY.
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THE CANADIAN EXCEPTION WAS OPPOSED AS A VIOLATION OF GATT, ARTICLES XI AND XIII, AND OF VARIOUS BILATERAL FRIENDSHIP, COMMERCE, AND NAVIGATION (FCN) TREATIES. BOTH THE FCN'S AND GATT REQUIRE NON-DISCRIMINATORY APPLICATION OF SUCH NTBS. THE MANUFACTURING CLAUSE ITSELF IS ONLY PERMITTED UNDER THE GATT BECAUSE IT PRE-DATES THE GATT. STRONG INDUSTRY INTEREST IN THE CANADIAN EXCEPTION PERSUADED CONGRESS TO RETAIN IT. IMMEDIATE TERMINATION OF THE MANUFACTURING CLAUSE WAS NOT POLITICALLY FEASIBLE BECAUSE OF INDUSTRY AND TRADE UNION VIEWS THAT SUDDEN REMOVAL OF LONG-STANDING PROTECTION WOULD SERIOUSLY DAMAGE THE U.S. PRINTING INDUSTRY.

8. NOTWITHSTANDING THE INCONSISTENCIES WITH OUR COMMITMENTS TO GATT, AND IN CERTAIN FCNS, BECAUSE OF THE EXCEPTION FOR CANADIANS FROM THE RESTRICTIONS OF THE MANUFACTURING CLAUSE, THE EXECUTIVE AGENCIES GENERALLY SUPPORTED APPROVAL OF THE FIRST OVERALL REVISION OF THE U.S. COPYRIGHT LAW FOR DOMESTIC REASON AND, IN REGARD TO OUR FOREIGN RELATIONS, AS NOTED ABOVE, THE MANUFACT-

URING CLAUSE HAS BEEN LIBERALIZED AND A TERMINATION DATE (JULY 1982) HAS BEEN FIXED. FURTHER, THE NEW LAW HAS A MOST IMPORTANT PROVISION IN RELATION TO INTERNATIONAL COPYRIGHT PROTECTION, THAT IS, THE TERM OF COPYRIGHT PROTECTION IN THE U.S. WILL NOW BE LIFE OF THE AUTHOR PLUS 50 YEARS, IN LINE WITH THE PRACTICE OF MOST DEVELOPED COUNTRIES. THIS REMOVES THE MAJOR OBSTACLE TO U.S. ADHERENCE TO THE BERNE CONVENTION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS. (THE U.S. IS A PARTY TO ONE OTHER WORLD-WIDE COPYRIGHT AGREEMENT, THE UNIVERSAL COPYRIGHT CONVENTION.)

9. THE BRITISH EMBASSY HAS BEEN VERY ACTIVE IN PROTESTING BOTH THE CONTINUANCE OF THE CLAUSE AND THE EXCEPTION FOR CANADA. DEPARTMENT OFFICERS STRESSED TO THE BRITISH

THAT UNDER THE NEW BILL AS WELL AS THE PREVIOUS LAW, ONLY U.S. NATIONALS LIVING IN THE U.S., OR DOMICILIARIES ARE SUBJECT TO THE MANUFACTURING CLAUSE, BUT FOREIGN AUTHORS ARE NOT, BECAUSE OF THE TERMS OF THE UNIVERSAL LIMITED OFFICIAL USE
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COPYRIGHT CONVENTION (UCC). WE ALSO POINTED OUT THAT THE TERM OF PROTECTION IS INCREASED BY THE NEW BILL FROM THE PRESENT TERM OF 28 YEARS WITH A RENEWABLE TERM OF 28 YEARS TO LIFE OF THE AUTHOR, PLUS 50. ROYALTIES WOULD THUS CONTINUE OVER A LONGER PERIOD AND THE NEW BILL REPRESENTS A SUBSTANTIAL GAIN FOR FOREIGN AUTHORS AS WELL AS U.S. AUTHORS. MOREOVER, THE EXCEPTIONS INTRODUCED BY CLAUSE (B)(7) PERMITS AUTHORS COVERED BY SECTION 601 TO ARRANGE FOR BRITISH OR OTHER FOREIGN PUBLISHERS TO PRINT ABROAD AND DISTRIBUTE THEIR WORKS IN THE U.S., SO LONG AS THERE HAS BEEN NO U.S. MANUFACTURE. THIS PROVISION WAS SUGGESTED BY THE AUTHORS LEAGUE OF AMERICA BECAUSE IN SOME INSTANCES U.S. AUTHORS HAVE BEEN UNABLE TO FIND A U.S. PUBLISHER FOR A VARIETY OF REASONS (E.G. SPECIALIZED WORKS WITH A LIMITED MARKET), A SITUATION WHICH IN THE PAST HAS PRECLUDED THE AUTHOR FROM RECEIVING U.S. COPYRIGHT PROTECTION. MOST IMPORTANT AN END TO THE MANUFACTURING CLAUSE IS AT LEAST IN SIGHT. FYI. THE BRITISH SEEM MOLLIFIED ALTHOUGH THEY HAVE RAISED A QUESTION ABOUT POSSIBLE POLITICAL PRESSURE IN CONGRESS TO EXTEND THE CLAUSE AS 1982 APPROACHES. END FYI.

10. FOR OTTAWA. IF EMBASSY SEES NO OBJECTION, SUGGEST YOU RAISE AT APPROPRIATE LEVEL IN EXTAFF AND BUREAU OF INTELLECTUAL PROPERTY CANADIAN ADHERENCE TO FLORENCE AGREEMENT, POINTING OUT THAT AS USG HAS GIVEN FORCE OF LAW TO U.S.-CANADIAN PUBLISHING INDUSTRY AGREEMENT, WE

WOULD HOPE GOV WOULD TAKE POSITIVE ACTION TO COMPLETE
ADHERENCE TO FLORENCE AGREEMENT. FYI. THE HOUSE-SENATE
CONFERENCE REPORT CLEARLY INDICATES THAT SHOULD CANADA
NOT IMPLEMENT ITS PART OF THE "TORONTO AGREEMENT", THE
CONGRESS MAY RECONSIDER THE EXCEPTION FOR CANADA TO
SECTION 601. END FYI. KISSINGER

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